

§ 3.16 Representation.

(a) The government may be represented in proceedings before an Immigration Judge.

(b) The respondent/applicant may be represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice in accordance with 8 CFR part 292, at no expense to the government.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§ 3.17 Appearances.

(a) In any proceeding before an Immigration Judge in which the respondent/applicant is represented, the attorney or representative shall file a Notice of Appearance on the appropriate EOIR form with the Immigration Court and shall serve a copy of the Notice of Appearance on the Service as required by 8 CFR 3.32(a). Such Notice of Appearance must be filed and served even if a separate Notice of Appearance(s) has previously been filed with the Service for appearance(s) before the Service.

(b) Withdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.18 Scheduling of cases.

All cases shall be scheduled by the Immigration Court. The Immigration Court shall be responsible for providing notice of the time, place, and date of the hearing to the government and respondent/applicant.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.19 Custody/bond.

(a) Custody and bond determinations made by the service pursuant to part 242 of this chapter may be reviewed by an Immigration Judge pursuant to part 242 of this chapter.

(b) Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone.

(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:

(1) If the respondent is detained, to the Immigration Court having jurisdiction over the place of detention;

(2) To the Immigration Court having administrative control over the case; or

(3) To the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court.

(d) Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.

(e) After an initial bond redetermination, a request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination.

(f) The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 3.38.

(g) While any proceeding is pending before the Executive Office for Immigration Review, the Service shall immediately advise the Immigration Court having administrative control over the Record of Proceeding of a change in the respondent/applicant's custody location or of release from Service custody, or subsequent taking into Service custody, of a respondent/applicant. This notification shall be in writing and shall state the effective date of the change in custody location or status, and the respondent/applicant's current fixed street address, including zip code.

(h) An alien in deportation proceedings who has been convicted of an aggravated felony shall not be released from custody on bond or other conditions. Nevertheless, an alien who has been lawfully admitted to the United States and who establishes to the satisfaction of the Immigration Judge that the alien is not a threat to the community and that the alien is likely to appear at any scheduled hearings, may be released on bond or other conditions designed to guarantee such appearance.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.20 Change of venue.

(a) Venue shall lie at the Immigration Court where the charging document is filed pursuant to 8 CFR 3.14.

(b) The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Immigration Court. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

(c) No change of venue shall be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent/applicant may be reached for further hearing notification.

[57 FR 11572, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.21 Pre-hearing conferences and statement.

(a) Pre-hearing conferences may be scheduled at the discretion of the Immigration Judge. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding.

(b) The Immigration Judge may order any party to file a pre-hearing statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of pro-

posed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.

(c) If submission of a pre-hearing statement is ordered under paragraph (b) of this section, an Immigration Judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement. If objections in writing are required but not received by the date for receipt set by the Immigration Judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed.

[57 FR 11572, Apr. 6, 1992]

§ 3.22 Interpreters.

Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§ 3.23 Motions.

(a) *Pre-decision motions.* Unless otherwise permitted by the Immigration Judge, motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefore, the relief sought, and the jurisdiction. The Immigration Judge may set and extend time limits for the making of motions and replies thereto. A motion shall be deemed unopposed unless timely response is made.

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trial attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. If the Immigration Judge is unavailable or unable to adjudicate